war against another state, it implies that the whole nation declares war and that all the subjects or citizens of one are the enemies of those of the other." See also *U. S.* v. *Active,* 24 Fed. Cas. 755. Usage and custom prescribing restraints imposed for the protection of non-combatants and third persons generally is merely "a guide which the sovereign follows or abandons at his will. The rule * * * is addressed to the judgment of the sovereign, and although it cannot be disregarded by him without obloquy, yet it may be disregarded." Opinion by Chief Justice Marshall in *Brown* v. *U. S.,* 8 Cranch. 110. It appears then from these authorities that, *as far as the courts are concerned,* every authorized act of hostility against the enemy is lawful. War is governed by no restraints or limitations which any nation is bound to respect in its dealings with the other. This view, in accordance with that of the principal case, is maintained by the weight of authority.

NEW TRIALS—WHERE JUDGE MISDIRECTS HIMSELF ON A POINT OF LAW.—Two defendants were sued for a trespass, and the judge of the county court, sitting without a jury, apportioned the damages between them and rendered a several judgment against each for the assigned portion. Being convinced that this was error in law, the judge granted a new trial. *Held* that while he could grant a new trial for error committed in point of fact, he had no authority to do so for error in point of law. *Aster* v. *Barrett & Hulme* [1920], 3 K. B. 13.

The effect of the above decision is to make it impossible for the trial court to correct such an error, and to force the aggrieved party to an appeal. The American practice is generally *contra. Hawxhurst* v. *Rathgeb* (1898), 119 Cal. 532; *Wilson* v. *City National Bank* (1877), 51 Neb. 87. But it is said that when the error is purely one of law the effect of the award of a new trial is not a re-trial of the case but only a correction of the error by the court. *Lumbermen's Ins. Co.* v. *City of St. Paul* (1901), 82 Minn. 497; *Merrill* v. *Miller* (1903), 28 Mont. 134. In Indiana the practice is in accordance with the rule stated in the principal case. *Holmes* v. *Phoenix Mut. Life Ins. Co.* (1874), 49 Ind. 356; *Maynard* v. *Waidlich* (1901), 156 Ind. 562.

PATENTS—UTILITY OF INVENTION.—Plaintiff sued to recover damages for infringement of a patent. It was shown on the trial that the apparatus as described in the patent would not work successfully, although it could be made to do so by some mechanical changes. *Held,* the patent was invalid because of the inutility of the device. *Beidler* v. *United States* (1920), 40 Sup. Ct. 564.

It was quite unnecessary for the court to pass on the validity of the patent. If the defendant was using essentially the same device as that covered by the patent, then obviously the patented device was usable. "The patent was itself evidence of the utility of Claim 4, and the defendant was estopped from denying that it was of value." *Westinghouse Co.* v. *Wagner Mfg. Co.,* 225 U. S. 604, 616. If the defendant was using an essentially different device, equally obviously he was not infringing the plaintiff's patent

and the validity of the patent was quite extraneous to the case. In going out of its way to invalidate the patent the court disregards several prior decisions. In *Lowell* v. *Lewis*, 1 Mason 182, the contention was raised that the patent was invalid for lack of utility in the device. Mr. Justice Story held, however, "The word 'useful,' therefore, is incorporated into the act in contradistinction to mischievous or immoral. * * * But if the invention steers wide of these objections, whether it be more or less useful is a circumstance very material to the interest of the patentee, but of no importance to the public." *Acc., Bedford* v. *Hunt*, 1 Mason 302; *Kneass* v. *Schuylkill Bank*, 4 Wash. 9. In *Crown Cork & Seal Co.* v. *Aluminium Stopper Co.*, 108 Fed. 845, the patentee was allowed to recover damages for infringement even though the device as literally described in his patent would not work at all. The decision was placed on the ground that it took mere mechanical skill so to change it that it would work, and that the defendant, therefore, was using a device which embodied the idea covered by the plaintiff's patent. *Acc., Brunswick-Balke-Collander* v. *Backus, etc., Co.*, 153 Fed. 288. The principal case cites no authority on the point at all.

TELEGRAPHS—COMMERCE.—A contract, made in the state of Alabama for the transmission of a message from one point in the state to another point therein, routed by the telegraph company to the point of delivery by way of a relay station in the state of Georgia, *held*, an interstate transaction. *Western Union Telegraph Co.* v. *Glover* (Ala., 1920), 86 So. 154.

The Alabama court in its opinion admits that the trend of authority is contrary to its view. In fact, its holding on this point of interstate commerce, it agrees, is not necessary to its decision. Of the numerous cases on the subject, it finds but two to cite as favoring its view, and even in one of these the statement on the point is plainly *obiter*. *Telegraph Co.* v. *Taylor*, 57 Ind. App. 93, 104 N. E. 771. At first, misconceiving the doctrine of *Lehigh Valley R. Co.* v. *Penna.*, 145 U. S. 192 (involving the taxation of intrastate railways passing for a short distance into another state), some courts held that if the termini of a telegraph line were in one state a message between them was intrastate, even though the line passed in part over the territory of another state. *Railroad Commissioners* v. *Telegraph Co.*, 113 N. C. 213; *Telegraph Co.* v. *Reynolds*, 100 Va. 459. Then came the decision in *Hanley* v. *Kansas City So. R. Co.*, 187 U. S. 617, which restricted the doctrine of the *Lehigh Valley* case, and, in 1910, the amendment by Congress of the Interstate Commerce Act of 1887 so as to place interstate telegrams under the control of Congress on the same footing with the business of other common carriers. Most states then turned to the interstate commerce view. *Telegraph Co.* v. *Bolling*, 120 Va. 413; *Telegraph Co.* v. *Lee*, 174 Ky. 210, Ann. Cas. 1918-C, 1026 and 1036, notes; *Klippel* v. *Telegraph Co.* (Kan., 1920), 186 Pac. 993; L. R. A. 1918-A, 807. The United States Supreme Court in a most recent case held contrary to the decision in the principal case, even though it was found that the message there was sent out of one state into another for the purpose of evading liability under the law of the